BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: GUARDIAN ON BEHALF OF STUDENT, v. ABC UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013020685

DECISION

Administrative Law Judge Deborah Myers-Cregar, Office of Administrative Hearings, heard this matter in Cerritos, California, on May 15, 16, and 20, 2013.

Tania Whiteleather, Attorney at Law, represented Student's Guardian, the holder of Student's educational rights. Student's Guardian attended the second day of hearing. Rodney Ford, advocate, attended the first and last day of hearing.

Adam Newman, Attorney at Law, represented ABC Unified School District (District). Terri Villa McDowell, District's alternate dispute resolution coordinator, attended all days of hearing.

Student filed her request for Due Process hearing on February 15, 2013. On April 5, 2013, OAH granted District's motion to continue the due process hearing, and the hearing was continued to May 15, 2013. The hearing was held on May 15, 16, and 20, 2013. The record was held open for the parties to submit closing briefs on June 10, 2013. Student faxed her closing brief on June 10 at 4:47 p.m., but the copy was illegible. She faxed a legible copy on June 11, 2013, and filed a motion for OAH to permit her late filing, which was granted. The matter was submitted and the record was closed on June 11, 2013.

ISSUE

Whether District denied Student a free appropriate public education (FAPE) during the January 15, 2013 IEP by failing to offer her placement in a residential treatment center (RTC).

FACTUAL FINDINGS

1. Student is a 15-year old female who, at all relevant times, was eligible for special educations services under the category of emotional disturbance.

2. Since the age of two, and at all relevant times, Student was a dependent of the juvenile dependency court and a client of the Los Angeles Department of Children and Family Services (DCFS). As such, DCFS has been responsible for supervising Student and funding all of her placements. DCFS initially placed Student with a foster parent, who later became her Guardian and Conservator. Student lived with her Guardian until two years ago. Since that time, DCFS placed her in several Licensed Children's Institutions (LCI's). Student eloped from both Level 12 and 14 LCI placements. Level 14 is a locked unit, the highest level of security in California. Student had 16 hospitalizations in the two years prior to her College Hospital admission.

College Hospital Admission

3. In October 2012, DCFS and the juvenile court authorized a psychiatric-medical hospitalization for Student. College Hospital, a crisis intervention psychiatric hospital, admitted her as a danger to herself and others. Student had suicidal ideations. College Hospital is in Cerritos, within District's geographic boundaries. The parties stipulated that District was educationally responsible for Student while she remained at College Hospital.

4. While at College Hospital, Student participated in a 14-15 hour per day therapeutic program. At the hospital, District provided Student with one hour per day of specialized academic instruction and 30 minutes per week of speech and language services. Student responded well to the medical and therapeutic interventions. Her mood and behaviors stabilized.

5. Student remained in College Hospital until March 26, 2013, when she was transported to Devereaux, an out of state RTC in Texas. Devereaux RTC has a higher level of security than California allows for its RTC's, in that it is a locked unit in which the staff is allowed to physically restrain students.

District's November 15, 2012 IEP

6. District's first IEP for Student was held on November 15, 2012, and all necessary IEP team members participated. District offered to conduct an Educationally Related Mental Health Assessment (ERMS), and a Functional Analysis Assessment (FAA). The assessments were completed by the December 18, 2012 IEP.

District's December 18, 2012 IEP

7. On December 18, 2012, District's second IEP for Student was held, and all necessary IEP team members participated. The IEP team reviewed the results of the ERMS, and FAA assessments. The assessors and the IEP team determined Student required educationally related social, emotional and behavior supports that included counseling services, social skills training, behavior intervention, case management and residential treatment.

8. Student's psychiatrist, Dr. Madeline Valencerina, determined Student was ready for medical discharge in December 2012. DCFS offered a Level 14 LCI, but Guardian obtained a Superior Court order allowing Student to remain at College Hospital until an Independent Educational Evaluation (IEE) was completed by another school district. DCFS paid College Hospital $37,000 per month for Student's stay, consistent with its financial obligation to fund all of Student's residential placements.

District's January 15, 2013 IEP

9. On January 15, 2013, District held its third IEP, and all necessary IEP team members participated. The IEP team reviewed the IEE completed by Dr. Mitchell Perlman, clinical forensic psychologist. Dr. Perlman determined Student required an RTC, consistent with the recommendation of District's ERMHS assessment. Dr. Pearlman recommended immediate transfer directly into an RTC with a high level of security. The IEP team agreed Student required a RTC as her educational placement, based upon the issues that led to her psychiatric hospitalization.

10. At the IEP meeting, Sonya Vardanyan, the Supervising Children's Social Worker (SCSW) from DCFS, and an IEP team member, said she could immediately place Student into an RTC and LCI. The next level of care below College Hospital was a LCI Level 14 placement. The SCSW identified Starview and several other RTC/LCI Level 14 placements into which Student could be discharged. The SCSW believed the Level 14 locked facility would be appropriate for Student's educational and treatment needs. The DCFS SCSW urged the Guardian to allow Student to be discharged into Starview while Guardian's preferred out of state RTC was being explored. Guardian believed Student required the higher level of security which Devereaux could provide. At hearing, the SCSW affirmed that DCFS, not

school districts, made the placement decisions for its clients because DCFS determined where the child would reside, pursuant to Welfare and Institutions Code section 300, et. seq.. The SCSW was obligated to have all the placement paperwork ready upon her discharge, and would have been obligated to pick her up, place her, and fund her placement. The SCSW was concerned with the cost it was paying College Hospital when that placement was no longer medically necessary.

11. District told the Guardian it would not be the school district responsible for providing a placement for Student after her discharge from College Hospital. District told the Guardian to contact the school district in which Guardian resided to take over the responsibility when Student was discharged.

12. Although the IEP notes reflect that District's position was that Student's placement after discharge and release from College Hospital should be an RTC, the services pages on the IEP did not offer that placement. At no time from January 15, 2013 forward did the District offer an RTC placement to Student.

13. Guardian provided consent in writing to the January 15, 2013 IEP, as well as to the IEP's from November and December 2012.

14. Guardian kept Student at College Hospital until March 2013, when she was discharged and transferred into Devereaux RTC in Texas. Guardian funded the out of state RTC for six months with settlement proceeds from two other school districts, prior to Guardian's district of residence taking over the responsibility.

LEGAL CONCLUSIONS

1. Student seeks a determination that District denied Student a FAPE when it did not offer an RTC in the January 15, 2013 IEP. Student also contends that District should have invited other local education agencies which could have been responsible for Student upon her discharge from College Hospital.

2. District contends that consistent with California law, it accepted responsibility for Student's education while Student remained at College Hospital. District contends that College Hospital is not an educational placement, but a medical placement. District contends it is not responsible for offering an educational placement because the district of Guardian's residence would be responsible for Student's educational placement decisions. District contends it did not invite the Guardian's district of residence to the IEP because it was premature, and there were many variables, including DCFS involvement, which could have affected Student's residence and the determination of the local educational agency responsible for her.

3. As the petitioning party, Student has the burden of proof on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

4. IDEA hearings brought by a student against a public agency properly include determinations of residency for purposes of identifying the public agency responsible for providing special education. (See *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525; *J.S. v. Shoreline School Dist*. (W.D. Wash. 2002) 220 F.Supp.2d 1175, 1191.) Special education due process hearings are limited to an examination of the time frame pleaded in the complaint and as established by the evidence at the hearing and expressly do not include declaratory decisions about how the IDEA would apply hypothetically. (Gov. Code, § 11465.10-11465.60; Cal. Code Regs., tit. 5, § 3089; see also *Princeton University v. Schmid* (1982) 455 U.S. 100, 102 [102 S.Ct. 867, 70 L. Ed. 2d 855] ["courts do not sit to decide hypothetical issues or to give advisory opinions"]; *Stonehouse Homes v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 539-542 [court deemed the matter not ripe for adjudication because it was asked to speculate on hypothetical situations and there was no showing of imminent and significant hardship].)

General residency requirements for school attendance for 'dependents of the court'

5. Special education due process hearing procedures extend to a student who is a ward or dependent of the court, to the parent or guardian, and to the "public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) Children are determined to be dependents of the court pursuant to Welfare and Institutions Code section 300.00, et.seq.. A "public agency" is defined as "a school district, county office of education, special education local plan area . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

6. In California, for the most part, residency determines which local education agency (LEA) has the responsibility for providing a disabled child with a FAPE. Under the compulsory education education law, a pupil between the age six and 18 must attend the school district where his/her parent or legal guardian resides. (Ed. Code, §§ 48200 and 56028; *Katz.v. Los Gatos-Saratoga Joint Union High School Dist*. (2004) 117 Cal.App.4th 47, 54.)

7. Residency in a particular LEA is also established if a pupil is placed in a licensed children's institution, or a foster home, or a family home pursuant to a commitment or placement under the Welfare and Institutions Code; if the pupil is the subject of an interdistrict transfer; if the pupil is emancipated; if the pupil is living in the home of a caregiving adult; or if the pupil is residing in a state hospital. (Ed. Code, § 48204, subds. (a)-(e).)

8. Education Code section 56156.4 establishes whether a special education local plan area, county office of education, or school district is responsible for a student's special education services while residing in an LCI or a foster home. It states in pertinent part:

> (a) Each special education local plan area shall be responsible for providing appropriate education to individuals with exceptional needs residing in licensed children's institutions and foster family homes located in the geographic area covered by the local plan.
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> (b) In multidistrict and district and county office local plan areas, local written agreements shall be developed . . . to identify the public education entities that will provide the special education services.
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> (c) If there is no local agreement, special education services for individuals with exceptional needs residing in licensed children's institutions shall be the responsibility of the county office in the county in which the institution is located, if the county office is part of the special education local plan area, and special education services for individuals shall be the responsibility of the district in which the foster family home is located. . .

Placing agency responsibility for residential costs and costs of noneducation services

9. Education Code section 56159 establishes when a court or public agency makes a decision to place a student in an LCI or a foster family home, the court or agency shall be responsible for residential and non-education costs. It states in pertinent part:

> If a district, special education local plan area, or county office does not make the placement decision of an individual with exceptional needs in a licensed children's institution or in a foster family home, the court, regional center for the developmentally disabled, or public agency, excluding an education agency, placing the individual in the institution, shall be responsible for the residential cost and the cost of noneducation services of the individual.

Residential medical facilities and educational responsibility during psychiatric hospitalization

10. Education Code section 56167, subdivision (a) identifies that the LEA in which an inpatient psychiatric hospital is located is educationally responsible for a student placed there. It states in pertinent part:

> Individuals with exceptional needs who are placed in a public hospital, state licensed children's hospital, psychiatric hospital

> … for medical purposes are the educational responsibility of the local educational agency in which the hospital or facility is located, as determined in local written agreements pursuant to subdivision (e) of Section 56195.7

11. Education Code section 56167.5 clarifies that a placement at a psychiatric hospital is not a "necessary residential placement" that would be treated as an educational placement for which the local educational agency is responsible. It states in pertinent part:

> Nothing in this article shall be construed to mean that the placement of any individual with exceptional needs in a hospital or health facility constitutes a necessary residential placement, as described under Section 300.104 of Title 34 Code of Federal Regulations, for which the local education agency would be responsible as an educational program option under this part.

Statutory Construction

12. The Education Code expressly states the principle of statutory construction that "the definitions prescribed by this article apply unless the context otherwise requires." (Ed. Code, § 56020.) Generally, statutory interpretation requires a determination of "whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." (*Barnhart v. Sigmon Coal Co., Inc.* (2002) 534 U.S. 438, 450 [122 S.Ct. 941, 151 L.Ed. 2d 908].) No further interpretation is required if the statutory language is unambiguous and "the statutory scheme is coherent and consistent." (*Id.* at p. 450.)

13. Common principles of statutory interpretation include: 1) that "words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible"; 2) "statutes should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect"; and 3) when interpreting several statutes, they "must be read together and so construed as to give effect, when possible, to all the provisions thereof." (*Katz v. Los Gatos-Saratoga Joint Union High School Dist., supra,* 117 Cal.App.4th at p. 54 [citations and internal quotation marks omitted].) In addition, statutes should be interpreted in a way that avoids absurd results. (*Id.* at pp. 66-67.)

Analysis

14. Here, District did not deny Student a FAPE at the January 15, 2013 IEP when it did not offer an RTC because it was not the agency who placed Student at

College Hospital in the first place. College Hospital was a temporary hospitalization, not a change of residence. As such District, was not responsible for providing Student a FAPE upon her discharge. Pursuant to Education Code section 56159, District was not the responsible placing agency. Rather, the juvenile dependency court and DCFS were the placing agencies for medical, residential, and noneducational purposes, and they exercised their placement authority at all times, pursuant to Welfare and Institutions Code section 300.00, et seq.. DCFS facilitated and funded all of Student's placements since she was two years old. The Superior Court had ordered Student's placement into College Hospital, and DCFS facilitated that placement. The Superior Court kept Student at College Hospital beyond her medical discharge in December 2012. At all times, DCFS acknowledged it would be responsible for Student's residential placement, prior to, during, and after her discharge.

15. At the January 15, 2013 IEP, DCFS offered Starview RTC/LCI as both an interim and a permanent placement. The SCSW urged Guardian to accept Starview, as DCFS was paying $37,000 per month for a psychiatric placement that was no longer medically necessary. Guardian did not agree. Instead, Guardian waited until she, through settlement of IDEA claims with two other school districts, received funds to place Student in an out-of-state RTC for six months, on March 26, 2013.

16. District was responsible for providing Student's educational program at all times while Student was placed in College Hospital. At all relevant times, District provided specialized academic instruction one hour per day during her 14-15 hour per day therapeutic program. However, District's educational obligation was a temporary one, and lasted only as long as Student remained at College Hospital. Education Code sections 56167 and 56167.5 demonstrate that Student's medical placement into an inpatient psychiatric hospital was not to be considered a 'necessary residential placement' for educational purposes. College Hospital was not a RTC or an LCI (that would result in a change of where Student resided) but a temporary inpatient medical placement. Under California law, the psychiatric inpatient medical placement of a student by DCFS and the courts did not convert the school district where the hospital is located into the child's local educational agency for all purposes going forward. This is particularly true where the only connection District had to Student was that DCFS had placed Student in a hospital within District. Further, DCFS retained the ability to change Student's residency before or after discharge. Any other construction would lead to the absurd result that any school district where a hospital was located would be responsible for offering a FAPE for the period after a child was discharged. Thus, although District had a duty to provide a FAPE while Student was an inpatient at College Hospital, that duty did not extend to making an offer of a FAPE for Student's post-discharge educational program. District's IEP appropriately acknowledged that Student would require an RTC upon discharge, and referred Guardian to the district of residence. Student was not denied a FAPE on this ground. (Legal Conclusions 3-16; Factual Findings 1-14.)

17. Similarly, Student argues that District should have made an offer of an RTC in order to provide a FAPE after discharge from College Hospital and then use procedures under Government Code section 7585 to obtain a determination that another agency should be responsible for funding. However, Student's reliance on that statute is misplaced, as it is limited to disputes occurring when "a department or local agency designated by that department fails to provide a related service or designated instruction and service required pursuant to [Government Code] Section 7575, and specified in the pupil's individualized education program." (Gov. Code, § 7585, subd. (a).) Government Code section 7575 concerns the provision of occupational therapy and physical therapy by other state or local agencies and has nothing to do with determination of responsibility for educational placements such as RTC's. Accordingly, Student's reliance on these statutes is misplaced.

18. The OAH Decisions which Student cites in her closing brief, OAH Case Numbers 2009100939, 2011090350, 2010040050/2011030120, 2010040889, and 2009100740, are distinguishable from the case at hand. Those Decisions each involve a student who had been a juvenile delinquent, detained in juvenile hall, and serviced by Los Angeles County of Education at a juvenile hall school, with a recommendation by the county Department of Mental Health that the student required an RTC upon release from the juvenile hall, pursuant to its AB 3632 mental health assessment. Student's reliance on OAH Case No. 2009100939 is misplaced. That case does not apply on the facts presented here. In that case a delinquent of the court was placed in a juvenile court school. The county office of education was charged with providing Student a FAPE, and was therefore required to implement an IEP. The IEP stated that the county office of education understood the student would be released from Juvenile Hall "only if he went directly into the residential treatment center." Thus, the county office of education was required to implement the IEP and place the student in the RTC in accordance with Education Code §§ 48645.2, 48646, and 56150. Accordingly, after the student was placed in the RTC, and based on the law as it existed at the time, the county office of education could seek reimbursement from other public agencies by using the appropriate administrative or legal procedures.

19. None of the OAH decisions cited by Student are controlling precedent. (Cal. Code Regs., tit. 5, § 3085.) Second, all of the decisions were issued at a time when the county mental health department had a duty to provide an RTC pursuant to AB 3632, whereas now school districts where the child resides are solely responsible for the provision of RTC's if required by the child's IEP.[1] Third, the rules for

[1]Effective July 1, 1986 to June 30, 2011, mental health assessments and provision of RTC placements were the joint responsibility of the State Secretary of Public Instruction and the State Secretary of Health and Welfare. (Gov. Code §§7570, 7572, and 7576.) Assembly Bill 3632 assigned responsibility on the county Department of Mental Health to assess, place, and fund any needed mental health services and RTC placements when its assessments determined a student was

residency for a juvenile dependent in a foster home, LCI, RTC, or a mental hospital are distinct from those governing a juvenile delinquent detained in juvenile hall. While the county office of education would be responsible for providing a FAPE to a student under the jurisdiction of the juvenile court and attending the juvenile delinquency court school, Student was never detained before the juvenile delinquency court, and was never placed in a juvenile delinquency court school. Such placements are the equivalent of establishing the student's enrollment in the juvenile hall school for all purposes, including provision of a residential placement going forward. (See Ed. Code, §§ 48645.1, 48645.2, 48646, and 56150.) In contrast, under the facts of the instant case, Student's placement in a psychiatric in-patient hospital was always temporary, and Student's District of residence was subject to change by DCFS depending on whether Student was placed in an LCI or with her guardian. Therefore, other OAH cases cited by Student that rely on Education Code sections 56150, 48645.1, 48645.2, and 48646, subdivisions (a), (b)(5)(B) do not apply.

20. Finally, contrary to Student's contention, District did not have an obligation to invite potential prospective districts to the IEP's, based on speculative residency of Student at an undetermined time in the future. If Guardian had consented to DCFS's placement offer of Starview LCI, then the corresponding county office of education would have been responsible for Student's educational placement and related services, pursuant to Education Code section 56156.4. If Guardian had consented to placement in a foster home, then those respective districts would have been responsible. Thus, there were many variables which would have affected Student's future residence, based upon whether she was institutionalized, or placed with the Guardian or a foster home. District was only obligated to invite IEP members based on Student's then current residency, such that she was not denied a FAPE on this ground. (Legal Conclusions 3-20; Factual Findings 1-14)

ORDER

All of Student's requests for relief are denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. District prevailed on the sole issue presented.

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seriously emotionally disturbed, and recommended such services. However, Assembly Bill 114, operative January 1, 2012, assigned that responsibility to the local education agency, as codified in Government Code sections 7572.5, 7572.55, and 7573.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by this Decision. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

Dated: July 11, 2013

_____/s/_____
DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings